

130 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ISO New England Inc.

Docket No. ER10-186-000

ORDER ON FORWARD CAPACITY AUCTION RESULTS FILING

(Issued February 26, 2010)

1. In this order, the Commission accepts a filing by ISO New England Inc. (ISO-NE) detailing the results of ISO-NE's third Forward Capacity Auction, which will apply to the 2012-2013 Commitment Period.

I. Background

2. As discussed in prior orders,¹ on March 6, 2006, ISO-NE filed a Settlement Agreement establishing the framework for New England's Forward Capacity Market (FCM). Under the FCM mechanism, ISO-NE will provide capacity payments to resources that provide capacity to the New England region, and capacity resources will compete through an annual Forward Capacity Auction to be selected to provide capacity on a three-year forward basis. ISO-NE conducted its third Forward Capacity Auction on October 5 and 6, 2009.

3. On October 30, 2009, ISO-NE submitted a filing containing the results of the October 2009 Forward Capacity Auction to the Commission. ISO-NE states that, pursuant to section III.13.8.2 of its Transmission, Markets, and Services Tariff (Tariff), it

¹ See, e.g., *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008) (FCA 1 Order); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009). See generally *Devon Power LLC*, 115 FERC ¶ 61,340 (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 380 U.S. App. D.C. 257, 520 F.3d 464 (2008), *order on remand*, *Devon Power LLC*, 126 FERC ¶ 61,027 (2009).

is submitting the results of the Forward Capacity Auction, including the final set of Capacity Zones resulting from the auction, the Capacity Clearing Price in each of those Capacity Zones and the Capacity Clearing Price associated with certain imports pursuant to Section III.13.2.3.3(d), and a list of which resources received Capacity Supply Obligations in each Capacity Zone and the amount of those Capacity Supply Obligations, to the Commission under section 205 of the Federal Power Act (FPA).²

4. ISO-NE states that the auction resulted in two Capacity Zones: Maine and Rest-of-Pool, with a floor price of \$2.951/kW-month. ISO-NE states that it procured capacity equal to 31,965 megawatts (MW), which is 5,030 MW of excess capacity over the Installed Capacity Requirement (ICR).³ ISO-NE states that the Forward Capacity Auction concluded with 16.5 percent (641 MW) excess capacity in Maine and 14 percent (4,391 MW) in Rest-of-Pool.⁴ In accordance with the Tariff, when the minimum auction price is reached, the auction will conclude and load will pay only Net Installed Capacity Requirement (NICR) times the applicable floor price.⁵

5. Under the FCM, resources may opt out of the market by submitting a de-list bid during the auction, so that unless a unit is needed for reliability, that resource is allowed

² 16 U.S.C. § 824d (2006).

³ The ICR is “the level of capacity required to meet the reliability requirements defined for the New England Control Area” (definition of ICR at ISO-NE Tariff at 3rd Rev. Sheet No. 15KK) such that “the probability of disconnecting non-interruptible customers due to resource deficiency, on the average, will be no more than once in ten years.” See § III.12.1 of the ISO-NE Tariff at 1st Rev. Sheet No. 7307A. Because the auction cleared at the floor price with excess capacity above the ICR, resources may choose between a Capacity Supply Obligation of their full cleared capacity at an effective payment rate (\$2.535/kW-month in the Rest-of-Pool Capacity Zone and \$2.465/kW-month in the Maine Capacity Zone), or receiving the floor price of \$2.951/kW-month and prorating their Capacity Supply Obligation by the same ratio, subject to reliability review. Thus, the auction will purchase between 31,965 MW and 36,995 MW, depending on the proration elections of the auction participants.

⁴ ISO-NE states that the MW amounts were adjusted to reflect the Real-Time Emergency Generation (RTEG) limit of 600 MW.

⁵ ISO-NE states that the adjusted effective payment rate applied to RTEG resources is \$2.413/kW-month in the Rest-of-Pool Capacity Zone and \$2.347/kW-month in the Maine Capacity Zone.

to withdraw from the auction.⁶ Section III.13.8.2 requires ISO-NE to enumerate any de-list bids rejected for reliability reasons and the reasons for those rejections, pursuant to section III.13.2.5.2.5. ISO-NE states that 225 of these de-list bids (1,113 MW)⁷ were accepted and allowed to leave the auction. ISO-NE states that for reliability reasons, it rejected de-list bids from two units owned by Dominion Resources Services, Inc. (Dominion), namely, Salem Harbor Unit 3 and Salem Harbor Unit 4 (Salem Harbor 3 and 4). ISO-NE states that Salem Harbor 3 and 4 represent approximately 581 MW and will be retained to ensure the reliable operation of the New England power system (both to meet transmission security requirements and to avoid thermal overloads on the transmission system) in Northeast Massachusetts/Boston (NEMA/Boston), an area with limited capacity resources.⁸ Salem Harbor 3 and 4 will be paid a combined rate of \$5.330/kW-month for the June 2012 to May 2013 Capacity Commitment Period, as approved by the Commission.⁹

6. ISO-NE states that section III.13.2.4 of the Tariff specifies that the Cost of New Entry (CONE) is adjusted based upon the results of the previous auction. Given that this auction was the third successful Forward Capacity Auction and did not require New Capacity Resources, CONE for the fourth Forward Capacity Auction will remain at \$4.918/kW-month.¹⁰ Permanent and export de-list bids that are greater than 0.8 times CONE (\$3.934/kW-month) were required to be submitted to the ISO-NE market monitor for review by December 1, 2009, in order to be permitted in the fourth Forward Capacity Auction.

⁶ This type of de-list bid is referred to as a "Dynamic De-List Bid" in the Tariff.

⁷ Additionally, ISO-NE accepted one Administrative Export and 89 Static De-List Bids (429 MW), six Permanent, and five Static De-List Bids were rejected by the internal market monitor (761 MW); and ISO-NE submitted and accepted Permanent De-List Bids on behalf of seven existing demand resources (7 MW), because of their failure to submit an Updated Measurement and Verification Plan for the Operable Capacity Analysis pursuant to section III.13.1.4.8.1 of the Tariff.

⁸ ISO-NE transmittal letter, Attachment B, testimony of Stephen B. Rourke (Rourke Testimony) at 11-28.

⁹ *ISO New England Inc.*, 128 FERC ¶ 61,266, at P 51, 53 (2009), *reh'g denied*, 130 FERC ¶ 61,108 (2010).

¹⁰ ISO-NE Tariff § III.13.2.4(b)(i).

7. Additionally, as required by section III.13.8.2(b) of the Tariff, ISO-NE provided documentation regarding the competitiveness of the Forward Capacity Auction, including the certification of the auctioneer and ISO-NE that all entities offering and bidding in the auction were properly qualified and that the auction was conducted in accordance with the provisions of the Tariff. ISO-NE states that "[t]he results of the third [Forward Capacity Auction] demonstrate that the [FCM] continues to procure the necessary resources to provide reliable capacity supply for New England."¹¹

II. Notice of Filing, Interventions, Comments, Protests, and Answers

8. Notice of the filing was published in the *Federal Register*, with motions to intervene, notices of intervention, comments, and protests due on or before November 20, 2009.¹² The Commission subsequently issued a notice extending the comment date until December 14, 2009.

9. The New England Power Pool Participants Committee (NEPOOL), Dynegy Power Marketing, Inc., the NRG Companies, and the Northeast Utilities Service Company filed timely motions to intervene. The Maine Public Utilities Commission filed a notice of intervention. The Massachusetts Department of Public Utilities and Dominion Resources Services filed motions to intervene out of time. Exelon Corporation (Exelon), the PSEG Companies (PSEG),¹³ the Boston Gen Companies and Mirant Parties (Indicated Suppliers),¹⁴ and the Massachusetts Municipal Wholesale Electric Company (MMWEC) filed timely motions to intervene and protests or comments. ISO-NE and NEPOOL each filed an answer to the protests and comments.

III. Discussion

A. Procedural Issues

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and the timely-filed unopposed

¹¹ ISO-NE transmittal letter at 3.

¹² 74 Fed. Reg. 58,269 (2009).

¹³ The PSEG Companies are PSEG ER & T, PSEG Power CT, PSEG Nuclear LLC, and PSEG Fossil LLC.

¹⁴ The Boston Gen Companies are Boston Generating, LLC; Mystic I, LLC; Mystic Development, LLC; and Fore River Development, LLC. The Mirant Parties are Mirant Energy Trading, LLC; Mirant Canal, LLC; and Mirant Kendall, LLC.

motions to intervene serve to make the entities filing them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we will grant the motions to intervene out of time, as granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by the parties because they have provided information that assisted us in our decision-making process.

B. Proration of Capacity Obligations

1. Protests, Comments, and Answers

11. For the first three Forward Capacity Auctions, section III.13.2.7.3(b) of the tariff provides that if the clearing price for capacity falls to 0.6 times CONE during the auction, capacity offers are prorated so that a resource may either sell all of its capacity at a lower price or sell a lesser amount of capacity at the full price offered. The tariff also provides that "[a]ny proration shall be subject to reliability review."¹⁵ In the instant filing, ISO-

¹⁵ ISO-NE tariff, section III.13.2.7.3(b), states that for the first three successful Forward Capacity Auctions, the Capacity Clearing Price shall not fall below 0.6 times CONE. It then provides:

Where the Capacity Clearing Price reaches 0.6 times CONE, offers shall be prorated such that no more than [the Net Installed Capacity Requirement, or NICR] is procured in the Forward Capacity Auction, as follows: the total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE times [the Net Installed Capacity Requirement, or NICR] applicable in the Forward Capacity Auction. Payments to individual listed resources shall be prorated based on the total number of MWs of capacity clearing in the Forward Capacity Auction (receiving a Capacity Supply Obligation for the associated Capacity Commitment Period). Suppliers may instead prorate their bid MWs of participation in the Forward Capacity Market by partially de-listing one or more resources. . . . Any proration shall be subject to reliability review. . . .

NE indicates that it may not be possible to allow megawatt proration in the Boston Subarea since this reduction in resource capability could cause a shortfall in the transmission security requirement. As such, ISO-NE states that the ability to allow megawatt proration will depend on the amount and location of resources in the Boston Subarea that request such proration.¹⁶

12. Indicated Suppliers assert that ISO-NE is erroneously interpreting its tariff on the proration issue. Indicated Suppliers state that section III.13.2.7.3(b) can be construed as meaning either that (1) MW proration and price proration are alternative means of ensuring that total payments to all listed capacity resources are equal to 0.6 times CONE times the NICR, with price proration serving as the default for suppliers that have not elected either form of proration; or (2) that there is a single form of proration – i.e., MW proration -- under which the prorating of payments to generators is achieved solely by reducing the MW offered. Indicated Suppliers state, however, that neither reading enables ISO-NE to require a supplier whose resources are needed for reliability to provide the full amount of MW offered at a price below the capacity clearing price.

13. Indicated Suppliers further argue that it is not clear whether the tariff's provision for "reliability review" applies to proration generally, or solely to MW proration, and that, even if the phrase applies solely to MW proration (so that ISO-NE could prevent a resource from prorating MW for reliability reasons), ISO-NE is not justified in applying price proration. Indicated Suppliers state that under the reading that MW proration is the principal form of proration (so that price proration is simply an administrative convenience to suppliers), ISO-NE's unilateral imposition of price proration is unacceptable.

14. Indicated Suppliers also assert that if, on the other hand, the reliability review is applicable to proration generally, this reading leaves no room for ISO-NE to disallow MW proration and require price proration. Indicated Suppliers state that, while ISO-NE may prevent the proration of MW for reliability reasons, in that case it may not unilaterally impose price proration, and must pay the full price for all MW needed in the capacity market. Indicated Suppliers state that MW proration involves a supplier, in essence, partially de-listing one or more resources to eliminate excess capacity, and in this situation, a supplier should be treated comparably with other suppliers whose requests to de-list capacity are rejected for reliability reasons, and who are paid the full market clearing price. According to Indicated Suppliers, under ISO-NE's implementation of the tariff, the resources needed most for reliability are paid the least, and Indicated Suppliers argue that it is unduly discriminatory to treat resources needed for reliability differently from resources not needed for reliability. Indicated Suppliers state that the

¹⁶ Rourke Testimony at 29.

Commission should make the compensation to suppliers not allowed to engage in megawatt proration for the 2012-2013 Commitment Period subject to the outcome of the ongoing stakeholder process addressing the FCM.

15. Exelon similarly notes in its comments that it is discriminatory to force a supplier to accept a price lower than the full clearing price for capacity in excess of that required to meet the NICR. Exelon states that all capacity receiving a Capacity Supply Obligation should be paid the same price for providing the same service and states that it seeks to preserve its right to challenge that proration if it occurs. Both Exelon and Indicated Suppliers ask the Commission to order ISO-NE, when it makes its decision on proration in early 2010, to file its proration decision with the Commission to provide a vehicle for that challenge.

16. ISO-NE responds to Exelon's and Indicated Suppliers' concerns by stating that the Commission clearly ruled on the proration issue in its order on the first Forward Capacity Auction and found that "[i]f . . . allowing resources to prorate their MWs would violate reliability criteria, including the transmission security margin, the FCM rules are clear that such resources will only be allowed to prorate the price they receive and not their MW capacity obligation."¹⁷ Thus, ISO-NE argues, the Commission should reject the parties' challenges to its proration actions. It further states that its ongoing stakeholder process (which is subject to a February 2010 filing with the Commission) is considering both substantive issues regarding proration and the timetable for addressing them, and ISO-NE therefore asks the Commission not to address proration issues in this proceeding. ISO-NE also asks the Commission not to impose the requirement that ISO-NE make a specific filing with regard to the proration of units in NEMA/Boston, stating that the Tariff does not provide for such a filing, and parties wishing to challenge a specific proration decision must file a complaint under section 206 of the FPA.

17. NEPOOL similarly asserts that any challenges to the current FCM rules in this proceeding should be rejected as the instant docket is an administrative proceeding. Further, in response to Indicated Suppliers' request to apply any potential market rule changes from the ongoing stakeholder process to the 2012-2013 Commitment Period, NEPOOL states that it opposed any effort to force the Commission to prejudge potential changes to the FCM Rules. Rather, NEPOOL states that if market rule changes are necessary to address the relief sought by Indicated Suppliers for the 2012-2013 Commitment Period, these concerns should be raised in the appropriate stakeholder and Commission processes for seeking market rule changes.

¹⁷ FCA 1 Order, 123 FERC ¶ 61,290 at P 75, footnote omitted.

2. Commission Determination

18. Addressing the proration issue, we first note that the issue of whether suppliers in NEMA/Boston may prorate capacity is not yet before us. At this time, ISO-NE has only indicated that resources in the Boston Subarea may not be able to prorate MWs for the 2012-2013 Commitment Period. However, that decision has not been made, pending the pro-rationing requests by FCM participants. Seemingly acknowledging this fact, Exelon and Indicated Suppliers request that the Commission require ISO-NE to file the results of its ultimate decision on pro-rationing, including its rationale and associated price implications.¹⁸ However, as noted by ISO-NE, there is no tariff provision that requires ISO-NE to make such a filing, and the current 205 filing is not the proper venue for making such a request; we have previously found that in this proceeding, ISO-NE is required “solely to demonstrate that it conducted the FCA pursuant to its own market rules.”¹⁹ Exelon and Indicated Suppliers offer no evidence that ISO-NE failed to satisfy this requirement. Therefore, we will deny this request.

19. Further, as Exelon and Indicated Suppliers are aware, the Commission has previously ruled on this pro-rationing issue (though in Connecticut and not NEMA/Boston) in its order on the results filing for the first FCA. In that proceeding, we denied PSEG’s request to pay the clearing price to those resources that ISO-NE determined were unable to prorate megawatts after the first FCA, stating that “PSEG’s suggestion would violate section III.13.2.7.3(b) of the ISO-NE Tariff and the FCM Settlement, which prohibit ISO-NE from purchasing more capacity than what is equal to the ICR times the clearing price.”²⁰ We also ruled in that proceeding that proration is subject to reliability review by ISO-NE.²¹ While acknowledging in a footnote to its pleading that the Commission has already ruled on these issues, Indicated Suppliers offer no new rationale for its position that the Commission has not considered previously. Rather, Indicated Suppliers contend that these issues were “wrongly decided” in the FCA

¹⁸ Exelon notes that ISO-NE has previously made an informational filing with the Commission summarizing this decision (Exelon comments at 5), yet notes that it is not clear that such a filing is required. Indicated Suppliers ask the Commission to require ISO-NE to file the results of its proration analysis, as it did following the first Forward Capacity Auction (Indicated Suppliers protest at 9 n.23); we note that, while ISO-NE did make such a filing, it was not in response to a Commission order.

¹⁹ *ISO New England Inc.*, 127 FERC ¶ 61,040, at P 28-29 (2009).

²⁰ FCA 1 Order, 123 FERC ¶ 61,290 at P 74.

²¹ *Id.* P 75.

1 Order where we found that ISO-NE has the authority to prorate price. We disagree and find that if ISO-NE ultimately prorates price in NEMA/Boston for the 2012-2013 Commitment period due to reliability concerns, such a decision would be consistent with its current tariff.

20. Importantly, as noted by Indicated Suppliers, ISO-NE, and NEPOOL, the proration issue is part of the Design Basis Document that was produced by the FCM Working Group,²² and is therefore one of several FCM issues presently under consideration by NEPOOL and ISO-NE. As stated previously, ISO-NE has committed to filing any proposed changes to its tariff stemming from this stakeholder process during February 2010. Consistent with our prior position that this proceeding is limited to the question of whether ISO-NE properly conducted the third Forward Capacity Auction,²³ we agree with NEPOOL and ISO-NE that the ongoing stakeholder process is the proper forum for the proration issue raised here by Indicated Suppliers and Exelon. Finally, we note that Indicated Suppliers have provided no justification for their request to allow compensation to suppliers not allowed to engage in megawatt proration for the 2012-2013 Commitment Period to be subject to the outcome of the ongoing stakeholder process. ISO-NE notes in its answer that the ongoing stakeholder process “is addressing both the substantive issues raised by [Indicated Suppliers] and the timetable for addressing them.”²⁴ As such, we will evaluate any proposal to address the proration issue, including the proper implementation timeframe, only in the proceedings related to the revisions to the Forward Capacity Market filed by ISO-NE on February 22, 2010 (Docket No. ER10-787-000).

C. Rejection of Salem Harbor De-List Bids

21. As noted previously, subject to section III.13.2.5.2.5 of the tariff, ISO-NE rejected the static de-list bids of two of the Salem Harbor units for reliability reasons. Specifically, ISO-NE states that allowing these resources to leave the market would result in a violation of NERC or NPCC criteria (NPCC A-2, Section 5) and Planning Procedure No. 3, Section 3.

²² Indicated Suppliers protest at 7.

²³ FCA 1 Order, 123 FERC ¶ 61,290 at P 17 (broader concerns regarding FCM market design issues "are more appropriately raised in the ISO-NE stakeholder process, rather than in response to the instant filing, which relates solely to the results of the first FCA").

²⁴ ISO-NE answer at 12.

1. Protest and Answers

22. MMWEC states that it objects to ISO-NE's rejection of the de-list bids for Salem Harbor 3 and 4 for reliability reasons, on the basis that this determination may require consumers in NEMA/Boston to make \$37 million in reliability payments during 2012-2013.

23. MMWEC first asserts that ISO-NE has made conflicting statements regarding a reliability need for the Salem Harbor units. MMWEC first cites to ISO-NE's statement that rejection of the Salem Harbor Units 3 and 4 is justified in part because a "second contingency"²⁵ analysis shows that, under certain circumstances, overloads of transmission facilities in the North Shore portion of the Boston Subarea could be mitigated only through use of the generation from the Salem Harbor units.²⁶ MMWEC, however, also points to statements made by ISO-NE in quarterly status reports, filed by order of the Commission subsequent to a settlement proceeding,²⁷ explaining that the Salem Harbor units would no longer be needed to meet reliability criteria in the North Shore because of significant infrastructure improvements in that part of the New England grid. MMWEC notes that ISO-NE stated in a November 2007 quarterly status report that the Salem Harbor units would be needed until certain upgrades to the transmission system that served the North Shore were completed and that those upgrades have now been completed. Similarly, in a July 2008 quarterly report, ISO-NE stated that "[t]oday the total Salem Harbor plant is not necessary to support the North Shore area."²⁸ MMWEC therefore questions why ISO-NE's witness, Stephen Rourke, now states that Salem Harbor is needed to address the results of a "second contingency transmission operability analysis" in the case of "overloads of transmission facilities" in the North Shore area.²⁹ MMWEC asks the Commission not to approve ISO-NE's determination to

²⁵ A "first contingency" analysis includes the loss of a critical generator or transmission element. A "second contingency" analysis includes the loss of the most critical transmission element, followed by the loss of the next most critical generator or transmission element. Rourke Testimony at 11.

²⁶ MMWEC protest at 6, *citing to* Rourke Testimony at 24, 26.

²⁷ MMWEC protest at 7, *citing to* section II.B.4(b) of the settlement in *USGen New England Inc.*, 111 FERC ¶ 61,454 (2005).

²⁸ MMWEC protest at 9, *citing to* Salem Harbor quarterly report prepared by ISO-NE at 3, dated July 23, 2008.

²⁹ Rourke Testimony at 26.

reject the Salem Harbor de-list bids (and compensate them for providing reliability services) absent a showing by ISO-NE that reconciles Mr. Rourke's testimony with its earlier statements regarding Salem Harbor.

24. MMWEC also states that ISO-NE views the combination of Mystic Units 8 and 9 as the "single largest unit" in the Boston Subarea, on the basis that a common mode failure at the facility (i.e., a single failure that will make both units unavailable) would result in the loss of both units. Thus, according to MMWEC, ISO-NE believes that the potential loss of the two combined units should be treated as the "first contingency" that could impair reliability in New England.³⁰ MMWEC states, however, that ISO-NE has been aware of this problem (the failure of the common facility) since 2004 and committed in 2005 to work with the owners of the Mystic facility to address it, but instead, ISO-NE now states that this problem will persist until the end of 2013. In particular, MMWEC is concerned because this "first contingency" is, in its view, one of ISO-NE's grounds for requiring retention of the Salem Harbor units. MMWEC asserts that ISO-NE's filing and Mr. Rourke's testimony do not set forth what efforts have been made to address the problems at the Mystic units or why the appropriate remedial actions have not yet been taken. MMWEC argues that the Commission should not approve ISO-NE's determination to retain the Salem Harbor units, absent a showing by ISO-NE as to (1) why the common facility failure at the two Mystic units remains in place, (2) how and when ISO-NE anticipates a solution to this problem, and (3) the impact that resolution of the problems with the Mystic units would have on the need to retain the Salem Harbor units for reliability.

25. In response to MMWEC's argument, ISO-NE states that the apparent discrepancies between Mr. Rourke's testimony regarding the Salem Harbor units in this proceeding and in its earlier quarterly reports regarding Salem Harbor stem from the fact that the reliability assessment performed as part of this proceeding was more extensive than the update in the quarterly reports. It states that the purpose of the quarterly reports was to "provide a high level status update of projects and factors that could influence the need for the Salem Harbor Units,"³¹ and it engaged in only a first contingency analysis in those reports. On the other hand, ISO-NE states that, in accordance with section III.13.2.5.2.5 of the Tariff and ISO-NE Planning Procedure No. 10, section 6, in reviewing the Salem Harbor de-list bids, it engaged in a thorough reliability review of the need for Salem Harbor 3 and 4, including an extensive second contingency analysis. ISO-NE states that this more thorough review demonstrated that the Salem Harbor units are needed to avoid overload violations in the North Shore portion of the Boston Subarea.

³⁰ MMWEC protest at 10-11.

³¹ ISO-NE answer at 7.

26. ISO-NE further states that it considers the loss of Mystic Units 8 and 9 as a single contingency, because the two units are located at the same plant and share critical common facilities, including a feeder line to the Mystic units' sole fuel supplier, Distrigas, such that interruption of the supply of natural gas from Distrigas would cause an outage at both units. It further notes that interruption of the gas supply has caused a failure at Mystic Units 8 and 9 on four occasions between 2003 and 2009. ISO-NE states that it is its understanding that modifications at the Mystic facilities have resolved all identified common mode failures of equipment at the Mystic facilities; however, fuel supply remains a concern at the plant. ISO-NE states that, while it is continuing to work with the appropriate entities to investigate this matter, it is currently unclear whether the fuel supply question can be resolved. ISO-NE further states that fuel supply issues are not within its planning authority and it is not the appropriate entity to report on how and if the fuel supply issue will be resolved. Therefore, ISO-NE asks the Commission to dismiss MMWEC's request for an ISO-NE report on this matter.

2. Commission Determination

27. MMWEC suggests that, because ISO-NE's statements in support of requiring the retention of the Salem Harbor Units during the 2012-2013 Commitment Period differ from its statements made in the earlier Quarterly Reports, the Commission should not approve the retention of the Salem Harbor Units until ISO-NE reconciles the two differing statements, and takes steps to resolve the need to retain the Salem Harbor Units. In response to MMWEC's protest, ISO-NE states that the contingency claims made in its quarterly reports were for informational purposes and resulted from a less thorough reliability study than the process utilized in reviewing a de-list bid. ISO-NE states that the more detailed review that it conducted in reviewing the results of the Forward Capacity Auction considered the impact of secondary contingencies which were not considered in the quarterly report.³² Thus, ISO-NE states, the quarterly reports provided a high level status update whereas the de-list bid review was based on a relevant reliability criteria.

28. Additionally, though MMWEC states that ISO-NE erred in its finding that the Salem Harbor Units are needed for reliability, MMWEC does not provide evidence to support its position that the loss of the Mystic Units should not be considered as a single contingency which would require the retention of the Salem Harbor Units. For the reasons described below, we agree with ISO-NE's assessment that due to a fuel supply

³² The reliability review of the need for Salem Harbor Units 3 and 4 was done in accordance with section III.13.2.5.2.5 of the Tariff and ISO New England Planning Procedure No. 10, section 6. ISO-NE also presented the de-list reliability assumptions at the meeting of the Reliability Committee on September 17, 2009.

issue at the Mystic Units 8 and 9, it is appropriate to consider the loss of the two units as a single contingency. As ISO-NE notes, the possible common mode failure between the two units would be the result of an interruption to the fuel supplier, Distrigas, which is outside the planning scope of ISO-NE. ISO-NE notes that four such fuel supply disruptions have occurred between 2003 and 2009 that have affected the operations of both plants. MMWEC argues that ISO-NE has had ample time to address the situation since it filed comments in an August 2005 proceeding in which it expressed concerns regarding the common mode failure. In response to this assertion, ISO-NE states that it has worked with the owner of the plant to address all other possible common mode failures with the units, but the fuel supply problem remains. ISO-NE explains that the units are considered as a single contingency when performing a line-generator transmission security analysis because of the potential for a single failure of common facilities to lead to the loss of both units. We conclude that ISO-NE has offered sufficient explanation, and we therefore reject MMWEC's request that we not approve the retention of the Salem Harbor Units unless or until ISO-NE takes further actions to resolve the supply issue at the Mystic units.

29. As described in Mr. Rourke's testimony, the non-operation of the Salem Harbor Units would decrease "the N-1 Boston import limit by approximately 125 MW and the N-1-1 Boston import limit by approximately 325 MW," and imports into the Boston Subarea would have to be reduced to a lower level without the operation of the Salem Harbor Units than would be the case with the Salem Harbor Units operating.³³ Under such import limitations the Boston Subarea would be dependent on between 200 and 300 MW of capacity from the Salem Harbor Units.³⁴ Further, ISO-NE states that there is a reliability need of up to 580 MW of generation from the Salem Harbor Station to avoid Long Time Emergency overload violation in the North Shore portion of the Boston Subarea under N-1-1 scenarios.³⁵ Thus, we find that ISO-NE makes a reasonable assessment that under an N-2 condition, in which both a first contingency and a second contingency occurred, the Salem Harbor Units would be necessary to ensure reliability in the Boston Subarea.

D. FCM Market Design

30. Though PSEG concedes that it has "no reason to believe that the third [F]orward [C]apacity [A]uction was not conducted in accordance with the FCM market rules

³³ Rourke Testimony at 17.

³⁴ *Id.* at 20-21.

³⁵ *Id.* at 26.

currently in effect,"³⁶ it alleges that the results of this auction demonstrate flaws in the design and implementation of the FCM and that the market rules have failed to deliver the outcome that was intended when the Commission approved the FCM. PSEG explains that ISO-NE committed to filing a redesigned FCM with the Commission in early 2010 and PSEG actively engaged in the stakeholder process to address such FCM deficiencies. However, PSEG details the key flaws that it hopes the Commission will act upon in the upcoming redesign. The issues that PSEG claims are critical include excessive out-of-market capacity, lack of zonal market price separation, and de-list bids denied for reliability reasons. PSEG first contends that the failure of the Alternative Price Rule, in combination with capacity that is indifferent to the FCM price (as they are paid by "out of market" state contracts), has led to capacity prices that are artificially low, have no connection to the true cost of new entry, and fail to provide any locational signal. PSEG argues that "[t]he FCM Settlement and implementing market rules, whose principal purpose was to replace out-of-market cost-of-service agreements, have, in fact, resulted in their proliferation . . . , which clearly defeats the Commission's intent in creating the FCM."³⁷ In addition, because the CONE value is reset for each auction based on the clearing price of the prior auction, PSEG maintains that for the foreseeable future, the starting price of the auction will be well below even the actual costs of new entry.

31. Next, PSEG also addresses ISO-NE's failure to model separate capacity zones in the FCM. Specifically, PSEG states that, entering into the first Forward Capacity Auction, Connecticut was not modeled as a separate capacity zone, causing the clearing price in Connecticut to be the same as the clearing price in the rest of New England. However, due to reliability needs, none of the capacity in Connecticut was allowed to de-list. PSEG asserts that this situation arose because the market does not provide a price signal that indicates the locational value of capacity in Connecticut. PSEG alleges that this situation is likely to repeat itself in the third Forward Capacity Auction where NEMA/Boston was not modeled as a separate capacity zone. PSEG argues that the Commission's intent in FCM was to allow different zones to send different price signals based upon the relative need and cost of capacity in the various capacity zones. According to PSEG, the outcomes of the first and third Forward Capacity Auctions send exactly the wrong message to market participants – in areas where capacity is needed for reliability reasons, obligations are greater, risks are greater, yet compensation is less.³⁸

³⁶ PSEG protest at 1.

³⁷ *Id.* at 13.

³⁸ PSEG also asks the Commission to confirm that its decision with regard to this filing will be subject to two rehearing requests pending at the time that PSEG filed the instant comments. We confirm that our decision with regard to this filing will be

(continued...)

32. In their answers, ISO-NE and NEPOOL state that this proceeding is solely intended to evaluate the question of whether ISO-NE conducted the third Forward Capacity Auction in accordance with its market rules, and PSEG itself has stated that it has no reason to believe the contrary. Thus, they argue that PSEG's general challenges to the FCM market design are outside the scope of this proceeding. ISO-NE further notes that the issues PSEG raises are currently being considered in a stakeholder process in which PSEG is actively participating, and it anticipates making a filing of rule changes resulting from the stakeholder process in early 2010, and it asks the Commission not to prejudge or bias the results of that process.³⁹

Commission Determination

33. As explained above, ISO-NE is required to file the results of the Forward Capacity Auction with the Commission and we must evaluate the filing to determine if ISO-NE conducted the third Forward Capacity Auction in accordance with its market rules. The Commission finds that ISO-NE has demonstrated, and PSEG concedes, that the third FCA was conducted according to the FCM market rules, and thus we accept the filing. PSEG's allegations regarding flaws in the FCM design are outside the scope of this proceeding and will not be addressed as PSEG's concerns are not properly addressed as "comments" to this proceeding. Further, PSEG's arguments are a collateral attack on past Commission orders accepting the FCM Settlement and FCM rules.

34. While PSEG may disagree with the outcome of the auction, as we have stated in previous orders, we encourage parties to participate in the stakeholder process if they seek to change the market rules, and we are mindful that ISO-NE intends to file [or "has filed"] market design changes which may address the substance of PSEG's concerns. We appreciate that PSEG has fully participated in the recent stakeholder process that addressed these market design changes. However, we will not prejudge that proceeding by addressing PSEG's concerns here, but rather, we encourage PSEG to provide its comments in the FCM market design proceeding initiated by the filing made by ISO-NE on February 22, 2010 in Docket No. ER10-787-000.

subject to the pending rehearing of the FCA 1 Order, and the order on rehearing of *ISO New England, Inc.*, 128 FERC ¶ 61,266 (2009), Docket No. ER09-1424-002, was issued on February 18, 2010 (*ISO New England, Inc.*, 130 FERC ¶ 61,108 (2010)).

³⁹ As noted above, the referenced filing was made on February 22, 2010, and docketed as *ISO New England Inc.*, Docket No. ER10-787-000.

The Commission orders:

The Commission accepts ISO-NE's filing of the results of the Forward Capacity Auction, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.